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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

MIGUEL ANGEL GRANADOS,

Defendant and Appellant.

B211008

(Los Angeles County
Super. Ct. No. BA329513)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Robert J. Perry, Judge. Affirmed.

Tara K. Hoveland, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Theresa A. Patterson and Robert David Breton, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * *

Following a jury trial, appellant Miguel Angel Granados was convicted of the attempted premeditated murder of Bobby G., with true findings on gang and firearms discharge allegations. He was sentenced to life imprisonment plus 25 years to life, with a minimum of 15 years before parole eligibility.

Appellant contends that there was insufficient evidence of identity, as to attempted premeditated murder, and insufficient evidence as to some of the elements of the gang allegation. We reject the contentions and affirm.

FACTS

1. Police Officer Matthew Delao

On February 10, 2006, Officer Delao interviewed appellant while conducting a probation search at appellant's home in Hollywood. Appellant told Delao he belonged to a gang called "JMK."

2. Garry G.

Garry did not want to be in the courtroom, and he believed that "something could happen" to him if he testified. Even so, he identified appellant as the man he saw shoot his twin brother, Bobby on September 24, 2007. On that date, Bobby and Garry were 16 years old, Bobby belonged to a gang called the "Headhunters," and Garry associated with members of that gang but had not yet been initiated into it. The twins lived with their family in an apartment building on a street in Hollywood.

About two days before the shooting, while Garry was walking home, he saw appellant on a nearby street called "Kingsley." Garry assumed that appellant belonged to JMK, as members of JMK lived on that block of Kingsley. Garry did not say or do anything to appellant.

On September 24, shortly before 6:00 p.m., Garry and Bobby were on the front porch of their apartment building, talking with a young female friend named Johanna E. They were not armed. Garry saw appellant walking on the sidewalk across the street. Appellant looked at the trio on the porch. He stopped briefly behind a white van. He then crossed the street and walked toward the porch, with "a mean look" on his face.

Once appellant was near the porch, he posed one question to Bobby, the twin who belonged to the Headhunters. The question was, “Were you in my block?” Appellant did not give Bobby time to respond. He pulled out a gun, pointed it at Bobby’s chest and shot him, from 10 or 12 feet away. Appellant then ran away. Bobby was seriously wounded, but he survived. The police and paramedics arrived quickly, and he was taken to the hospital in an ambulance.

Shortly after the shooting, a police officer interviewed Garry, the twin who was not shot. Garry reported that the shooter was a 20-year-old bald Hispanic male. Garry also told the officer he believed the shooter belonged to JMK, lived on a specific portion of Kingsley, and shot Bobby due to dispute between JMK and the Headhunters. Later that day, Garry selected appellant’s photo from a six-pack photo lineup (six-pack), indicating that appellant shot Bobby. The next day, the twins’ family moved out of the apartment building.

During cross-examination, defense counsel brought out the only weakness in Garry’s identification. Garry testified that when he selected appellant’s photo from the six-pack, he told the police he was sure appellant was the shooter, but he had not actually been sure at that time. Garry went on to testify that, at the time of the trial, he was in fact sure that appellant was the shooter.

3. *Bobby G.*

On the day he was shot, Bobby had been in the Headhunters for about a month. He testified that it was a “real gang,” but it was not a violent gang, and its members did not have guns. He still belonged to the Headhunters at the time of the trial. Like Garry, he did not want to testify. He believed that “something bad” could happen to a gang member who testified against another gang member in court. Despite his reluctance to testify, he identified appellant as the person who shot him.

Bobby testified that on a couple of occasions prior to the date of the shooting, he had seen appellant while walking to a store that was east of Kingsley. The last such occasion was four or five days before the shooting. At that time, appellant stood in front of a house, and Bobby did not confront him in any way.

Bobby's testimony about the shooting was consistent in most details with Garry's version. According to Bobby, the words appellant uttered before firing the gun were, "Oh, you're the fool I seen on my block." Appellant then immediately pulled out the gun, pointed it Bobby, and fired. Bobby turned toward his left, with his right arm across his chest. The bullet went through his forearm and into his body, on the right side of the ribs. He underwent surgery that night and remained at the hospital for two weeks.

Bobby further testified that he spoke to police officers at the hospital on the night he was shot. At that time, he had multiple tubes in his body and could barely open his eyes or talk. He told the officers he was shot by a member of JMK, he himself belonged to the Headhunters, and he thought the shooting was motivated by the rivalry between JMK and the Headhunters. He also selected appellant's photo from a six-pack at that time.

Defense cross-examination brought out the fact that Bobby did not identify appellant at the preliminary hearing. Also, Bobby testified at the trial that he selected appellant's photo when he was shown the six-pack at the hospital because he simply chose the photo that was closest to his hand, as his arm was attached to an IV. Again, however, Bobby testified at the trial that he was sure it was appellant who shot him.

4. Johanna E.

Like Bobby and Garry, Johanna did not want to be in the courtroom. Johanna's testimony about the incident was consistent with the testimony of Bobby and Garry. However, she testified that she was unable to identify the shooter. She also said that, even though she had selected appellant's photo from the six-pack, she told the police that appellant "looked like" the shooter, rather than that he "was the person."

5. The Surgeon Who Operated on Bobby

Bobby received a potentially lethal bullet wound. The bullet traveled through his right arm and entered his body on the right side of his abdomen. It passed through his liver and stomach before it stopped inside his body.

6. *Officer Gabriel Bucknell*

Shortly after the shooting, Officer Bucknell showed Garry many pages of photos of JMK gang members. Garry pointed at appellant's photo and said, "That's him. That's who shot my brother."

7. *Detective Scott Frus*

When Detective Frus met with Bobby at the hospital, Bobby described the shooting, stated his belief that it resulted from the feud between the two gangs, and definitely identified appellant as the person who shot him, when he saw appellant's photo in the six-pack.

8. *Officer Manuel Arzate*

Officer Arzate took statements from Garry and Johanna after the shooting.

9. *Officer Gerardo Morales*

Officer Morales was the People's gang expert. We will summarize his testimony in connection with the gang issue in this case.

DISCUSSION

1. *Sufficiency of the Evidence of Attempted Premeditated Murder*

Appellant contends that his conviction must be reversed "because the evidence was insufficient to prove identification." Contrary to the record, he maintains that none of the eyewitnesses identified him at the trial. In fact, during the trial, both Garry and Bobby both unequivocally identified appellant as the person who shot Bobby. They also had previously selected appellant's photo from a six-pack. Moreover, the shooting occurred in broad daylight, appellant was standing near Bobby and Garry when he fired the gun, and both Bobby and Garry had previously seen appellant when they walked by Kingsley. The identification evidence in this case was therefore relatively strong.

Utilizing the appropriate standard of review (*People v. Kraft* (2000) 23 Cal.4th 978, 1053), we find that there was substantial evidence to support appellant's conviction for attempted premeditated murder.

2. The Sufficiency of the Evidence for the Gang Allegation

The jury found that appellant committed the shooting for the benefit of, at the direction of, or in association with a criminal street gang. (Pen. Code, § 186.22, subd. (b)(1)(C).)¹ Appellant contends that the evidence did not establish some of the requisite elements of that enhancement.

A. The Statute

With certain exceptions, section 186.22, subdivision (b)(1) punishes “any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members”

Section 186.22, subdivision (f) defines the term “criminal street gang” as an “ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more [listed offenses], having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.”

Section 186.22, subdivision (e) defines the term “pattern of criminal gang activity” as “the commission of, [or] attempted commission of . . . two or more of the [listed] offenses, provided at least one of these offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses were committed on separate occasions, or by two or more persons.” The list of offenses, sometimes called predicate offenses, includes “[u]nlawful homicide or manslaughter” and “[t]hreats to commit crimes resulting in death or great bodily injury, as defined in Section 422.” (*Ibid.*)

¹ Subsequent code references are to the Penal Code unless otherwise stated.

B. The Gang Expert's Testimony

Officer Morales had extensive training and experience in the area of criminal street gangs. He had personally spoken with over a thousand gang members. He explained that gang members use violence to intimidate people in the gang's territory, so they can commit crimes without fear of being reported to the police. Morales monitored gang activity in the portion of Hollywood that included the JMK and Headhunters gangs. Appellant belonged to JMK. Bobby belonged to the Headhunters, a much smaller gang than JMK. In 2007, the year appellant shot Bobby, there was an ongoing feud between the two gangs, as the Headhunters claimed territory within JMK's territory.

Based on his monitoring of JMK and personal conversations with its members, Officer Morales knew that gang's primary activities to be "robbery, possession of weapons, burglary, sales of narcotics," "assaults with firearms" and "felony vandalisms." A JMK member named Eddie R. had a sustained juvenile court petition for criminal threats, in violation of section 422 in May 2007.

In Officer Morales's opinion, based on the facts of this incident, appellant shot Bobby for the benefit of or in association with the JMK gang, because gang members are focused on respect, and going onto the territory of the rival gang and shooting one of its members would increase respect for appellant personally and for JMK.

C. The Second Predicate Offense

As indicated, Officer Morales's testimony included only one prior adjudicated case involving a JMK member, which was Eddie's sustained juvenile court petition for criminal threats. During argument, as a second predicate offense, the prosecutor relied on the attempted homicide that appellant committed in this case.

D. Analysis

Appellant contends that there was insufficient evidence of what the primary activities of JMK were, or that its members engaged in a pattern of criminal gang activity, or that Bobby was shot for the benefit of, at the direction of, or in association with a criminal street gang, and with the specific intent to promote or assist JMK.

We reject appellant's contentions based on *People v. Gardeley* (1996) 14 Cal.4th 605, 615 (*Gardeley*).

In *Gardeley*, the defendants were admitted gang members who severely beat up the victim, in an area where the gang sold drugs. The gang expert testified that the crime resulted from gang-related activity, as "criminal street gangs rely on such violent assaults to frighten the residents of an area where the gang members sell drugs, thereby securing the gang's drug-dealing stronghold." (*Gardeley, supra*, 14 Cal.4th at p. 619.) *Gardeley* found that the jury could reasonably conclude from that expert testimony that the attack on the victim was committed "'for the benefit of, at the direction of, or in association with' that gang, and 'with the specific intent to promote, further, or assist in . . . criminal conduct by gang members . . .'" (*Ibid.*)

The expert in *Gardeley* also testified that the gang's primary activity was selling narcotics, but its members also engaged in witness intimidation. As both of those crimes were in the list of predicate offenses, *Gardeley* found sufficient evidence that the gang's primary activities met section 186.22, subdivision (f)'s definition of a "criminal street gang." (*Gardeley, supra*, 14 Cal.4th at p. 620.)

Gardeley then considered whether the prosecution had proven the "pattern of criminal gang activity" that is required by section 186.22, subdivision (e). (*Gardeley, supra*, 14 Cal.4th at p. 624.) There was evidence that another member of the gang had previously committed a predicate offense, shooting at an inhabited dwelling, within the pertinent period. *Gardeley* found that the evidence during the trial of the current crime provided the second predicate offense, as the facts of the incident showed that the defendants had committed assault with a deadly weapon and attempted murder.

Similarly here, there was sufficient evidence for the gang enhancement.

For the purpose of section 186.22, subdivision (f), Officer Morales's testimony established the requisite primary activities of the gang, as Morales testified that those activities were "robbery, possession of weapons, burglary, sales of narcotics," "assaults with firearms" and "felony vandalisms."

The two predicate offenses that are required by section 186.22, subdivision (e) were established through (1) Officer Morales's testimony about Eddie's sustained juvenile court petition for criminal threats, and (2) the attempted homicide in the present case. (See *Gardeley, supra*, 14 Cal.4th at p. 624.)

Finally, the jury had before it the expert testimony of Officer Morales and the facts of the shooting. From Morales, the jury learned that appellant's gang, JMK, and Bobby's gang, the Headhunters, had an ongoing dispute that involved territory, and JMK would acquire increased respect if one of its members went onto Headhunters territory and shot a member of Headhunters. Other evidence showed that Bobby, and his twin brother, Garry, had previously walked by Kingsley, the territory of JMK, while appellant was standing there. Appellant came to Bobby's street with a loaded gun, saw Bobby on the porch of his residence, and approached him. Appellant said either, "Oh, you're the fool I seen on my block," or, "Were you in my block?" He then immediately shot Bobby, without giving him a chance to respond, and without any provocation.

Based on the combination of all the evidence, the jury could reasonably find that the crime was committed for the benefit of JMK, and with the specific intent to promote, further or assist in that gang's criminal conduct. (*Gardeley, supra*, 14 Cal.4th at p. 619; *People v. Olguin* (1994) 31 Cal.App.4th 1355, 1382-1385.)

We therefore conclude that there was substantial evidence to support the jury's finding on the gang allegation.

DISPOSITION

The judgment is affirmed.

FLIER, J.

We concur:

BIGELOW, P. J.

GRIMES, J.